IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.975 OF 2005

Smt.Vidyawati Gulab Kandare and Ors....Appellants
Versus
Mr.John David Daniel ....Respondents

Mr.U.B.Nighot for appellants

CORAM : P.V.KAKADE, J.

DATE : 5TH SEPTEMBER, 2005

P.C.:

1. The appellants have preferred this appeal against the judgment and order passed by District Judge, Pune dated 31.8.2004 dismissing the appeal and confirming the judgment and order passed by Joint Civil Judge, Pune dated 30.4.1998 partly decreeing the suit of the plaintiff to the extent that possession of the suit property was allowed and defendants were directed to restore the possession of Kartarsingh’s room to the plaintiff within two months from the date of the order along with damages, if, the order of the lower court for handing over possession was not complied with.

2. I have heard the learned counsel for the

appellants. Perused the record.

3. The plaintiff filed the suit on the ground that one Daniel was owner of the suit house CTS No.269 situated at Wanorie Taluka Haveli, Dist. Pune. Room admeasuring 15 x 12 was let out to one Kartarsingh. After purchase of property, Respondent filed eviction suit against Kartarsingh in the Court of Small Causes, Pune. Kartarsingh, however, expired in the month of July 1988 without leaving heirs. After death of Kartarsingh, Respondent kept their gunny bag and locked the suit premises. Adjoining room was occupied by appellants as a tenant. appellants opened the door some time in the month of December, 1988 and broke the lock put by respondent on the room of Kartarsingh. They had taken forcible possession of the suit premises and also put up a shed admeasuring 6′ x 8′ in the month of December, 1988 and thereby committed encroachment on this portion of the land belonging to the respondent. Respondent requested appellants to vacate the encroachment. He served them with notice. Inspite of the service, the appellants did not vacate the suit premises, the suit came to be filed for possession as well as consequential reliefs. The defendants contested

the suit, inter alia, submitting that they were looked after Kartarsingh in his last days and were related to him and also used to pay rent on several occasions but respondent did not accept the same and as such it was submitted that the defendants were in possession along with Kartarsingh of the suit property and hence the suit was sought to be dismissed.

. The learned trial judge adjudicated the dispute on merits and came to the conclusion that the defendants had failed to prove that they were in possession of the suit property. It was also held that the defendant no.2 failed to prove that they along with their family were residing with Kartarsing in suit property during life time of Kartarsingh and at the time of his death. It was also held to be proved that the defendant had forcibly obtained possession of the suit property and therefore, it was held that the plaintiff was entitled to take possession of the suit property from them. The appeal was carried to the District Court. The learned Addl. District Judge after hearing both the parties concluded that the findings recorded by the trial judge were legal and proper and dismissed the appeal. Hence the present appeal.

4. Initially it must be noted that there is absolutely no substantial question of law involved in this appeal. The learned counsel for the appellants sought to raise question to the effect that the Civil Court had no jurisdiction to entertain the suit, as the defendants were relatives and were residing with deceased Kartarsingh and therefore, they had become tenants in the suit property by inheritance under Section 5(11)(c) of the Bombay Rent Act, 1947. In this regard it must be noted that on facts both the courts below have come to the conclusion that there was no question of invocation of provision of the Bombay Rent Act in order to hold that the defendants were entitled for inheritance of Tenancy rights of Kartarsingh as they failed to establish relationship or joint residence of the suit property with Kartarsingh and as such there was no question of invocation of either provision of Bombay Rent Act or jurisdiction of the civil court. In fact, as can be seen from the judgment of the lower appellate court, this ground was not raised by the appellant in the First Appeal while appeal memo was filed and the point was just argued, but the lower appellate court judge has rightly considered and discarded the same

against the appellants. It must be noted at this juncture that the Apex Court in the case of **Kondiba Dagadu Kadam vs. Savitribai Sopan Gujar** reported in **(1999) 3 SCC 722** has categorically observed that where a point of law has not been pleaded or is found to be arising between the parties in the absence of any factual format, a litigant should not be allowed to raise that question as a substantial question of law in second appeal. If this principle is to be applied to the present set of fact there is no doubt whatsoever that the appeal has no merits and hence it deserves to be dismissed and stands dismissed.